

111TH CONGRESS
1ST SESSION

H. R. 2990

To provide special pays and allowances to certain members of the Armed Forces, expand concurrent receipt of military retirement and VA disability benefits to disabled military retirees, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 23, 2009

Mr. SKELTON (for himself, Mr. TOWNS, Mr. SPRATT, Mr. WAXMAN, Mr. RAHALL, Mr. MARKEY of Massachusetts, Mrs. DAVIS of California, and Mr. LYNCH) introduced the following bill; which was referred to the Committee on Armed Services, and in addition to the Committees on Oversight and Government Reform, Natural Resources, and Veterans' Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To provide special pays and allowances to certain members of the Armed Forces, expand concurrent receipt of military retirement and VA disability benefits to disabled military retirees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Disabled Military Re-
5 tirement Relief Act of 2009”.

1 **SEC. 2. TABLE OF CONTENTS.**

2 The table of contents for this Act is as follows:

Sec. 1. Short title.

Sec. 2. Table of contents.

TITLE I—COMPENSATION AND BENEFITS FOR MEMBERS OF THE ARMED FORCES AND MILITARY RETIREES

Subtitle A—Bonuses and Special and Incentive Pays

Sec. 101. One-year extension of certain bonus and special pay authorities for reserve forces.

Sec. 102. One-year extension of certain bonus and special pay authorities for health care professionals.

Sec. 103. One-year extension of special pay and bonus authorities for nuclear officers.

Sec. 104. One-year extension of authorities relating to title 37 consolidated special pay, incentive pay, and bonus authorities.

Sec. 105. One-year extension of authorities relating to payment of other title 37 bonuses and special pay.

Sec. 106. One-year extension of authorities relating to payment of referral bonuses.

Sec. 107. Technical corrections and conforming amendments to reconcile conflicting amendments regarding continued payment of bonuses and similar benefits for certain members.

Subtitle B—Retired Pay Benefits

Sec. 111. Recomputation of retired pay and adjustment of retired grade of Reserve retirees to reflect service after retirement.

Sec. 112. Election to receive retired pay for non-regular service upon retirement for service in an active reserve status performed after attaining eligibility for regular retirement.

Subtitle C—Concurrent Receipt of Military Retired Pay and Veterans’ Disability Compensation

Sec. 121. One-year expansion of eligibility for concurrent receipt of military retired pay and veterans’ disability compensation to include all chapter 61 disability retirees regardless of disability rating percentage or years of service.

TITLE II—FEDERAL EMPLOYEE BENEFITS

Subtitle A—General Provisions

Sec. 201. Credit for unused sick leave.

Sec. 202. Limited expansion of the class of individuals eligible to receive an actuarially reduced annuity under the civil service retirement system.

Sec. 203. Computation of certain annuities based on part-time service.

Sec. 204. Authority to deposit refunds under FERS.

Sec. 205. Retirement credit for service of certain employees transferred from District of Columbia service to Federal service.

Subtitle B—Non-Foreign Area Retirement Equity Assurance

- Sec. 211. Short title.
- Sec. 212. Extension of Locality Pay.
- Sec. 213. Adjustment of special rates.
- Sec. 214. Transition schedule for locality-based comparability payments.
- Sec. 215. Savings provision.
- Sec. 216. Application to other eligible employees.
- Sec. 217. Election of additional basic pay for annuity computation by employees.
- Sec. 218. Regulations.
- Sec. 219. Effective dates.

TITLE III—DEEPWATER OIL AND GAS RESEARCH AND
DEVELOPMENT FUNDING SOURCE REPEAL

- Sec. 301. Repeal.

1 TITLE I—COMPENSATION AND
2 BENEFITS FOR MEMBERS OF
3 THE ARMED FORCES AND
4 MILITARY RETIREES

5 Subtitle A—Bonuses and Special
6 and Incentive Pays

7 SEC. 101. ONE-YEAR EXTENSION OF CERTAIN BONUS AND
8 SPECIAL PAY AUTHORITIES FOR RESERVE
9 FORCES.

10 The following sections of title 37, United States
11 Code, are amended by striking “December 31, 2009” and
12 inserting “December 31, 2010”:

13 (1) Section 308b(g), relating to Selected Re-
14 serve reenlistment bonus.

15 (2) Section 308c(i), relating to Selected Reserve
16 affiliation or enlistment bonus.

1 (3) Section 308d(c), relating to special pay for
2 enlisted members assigned to certain high-priority
3 units.

4 (4) Section 308g(f)(2), relating to Ready Re-
5 serve enlistment bonus for persons without prior
6 service.

7 (5) Section 308h(e), relating to Ready Reserve
8 enlistment and reenlistment bonus for persons with
9 prior service.

10 (6) Section 308i(f), relating to Selected Reserve
11 enlistment and reenlistment bonus for persons with
12 prior service.

13 (7) Section 910(g), relating to income replace-
14 ment payments for reserve component members ex-
15 periencing extended and frequent mobilization for
16 active duty service.

17 **SEC. 102. ONE-YEAR EXTENSION OF CERTAIN BONUS AND**
18 **SPECIAL PAY AUTHORITIES FOR HEALTH**
19 **CARE PROFESSIONALS.**

20 (a) TITLE 10 AUTHORITIES.—The following sections
21 of title 10, United States Code, are amended by striking
22 “December 31, 2009” and inserting “December 31,
23 2010”:

24 (1) Section 2130a(a)(1), relating to nurse offi-
25 cer candidate accession program.

1 (2) Section 16302(d), relating to repayment of
2 education loans for certain health professionals who
3 serve in the Selected Reserve.

4 (b) TITLE 37 AUTHORITIES.—The following sections
5 of title 37, United States Code, are amended by striking
6 “December 31, 2009” and inserting “December 31,
7 2010”:

8 (1) Section 302c–1(f), relating to accession and
9 retention bonuses for psychologists.

10 (2) Section 302d(a)(1), relating to accession
11 bonus for registered nurses.

12 (3) Section 302e(a)(1), relating to incentive
13 special pay for nurse anesthetists.

14 (4) Section 302g(e), relating to special pay for
15 Selected Reserve health professionals in critically
16 short wartime specialties.

17 (5) Section 302h(a)(1), relating to accession
18 bonus for dental officers.

19 (6) Section 302j(a), relating to accession bonus
20 for pharmacy officers.

21 (7) Section 302k(f), relating to accession bonus
22 for medical officers in critically short wartime spe-
23 cialties.

1 (8) Section 302l(g), relating to accession bonus
2 for dental specialist officers in critically short war-
3 time specialties.

4 **SEC. 103. ONE-YEAR EXTENSION OF SPECIAL PAY AND**
5 **BONUS AUTHORITIES FOR NUCLEAR OFFI-**
6 **CERS.**

7 The following sections of title 37, United States
8 Code, are amended by striking “December 31, 2009” and
9 inserting “December 31, 2010”:

10 (1) Section 312(f), relating to special pay for
11 nuclear-qualified officers extending period of active
12 service.

13 (2) Section 312b(c), relating to nuclear career
14 accession bonus.

15 (3) Section 312c(d), relating to nuclear career
16 annual incentive bonus.

17 **SEC. 104. ONE-YEAR EXTENSION OF AUTHORITIES RELAT-**
18 **ING TO TITLE 37 CONSOLIDATED SPECIAL**
19 **PAY, INCENTIVE PAY, AND BONUS AUTHORI-**
20 **TIES.**

21 The following sections of title 37, United States
22 Code, are amended by striking “December 31, 2009” and
23 inserting “December 31, 2010”:

24 (1) Section 331(h), relating to general bonus
25 authority for enlisted members.

1 (2) Section 332(g), relating to general bonus
2 authority for officers.

3 (3) Section 333(i), relating to special bonus and
4 incentive pay authorities for nuclear officers.

5 (4) Section 334(i), relating to special aviation
6 incentive pay and bonus authorities for officers.

7 (5) Section 335(k), relating to special bonus
8 and incentive pay authorities for officers in health
9 professions.

10 (6) Section 351(i), relating to hazardous duty
11 pay.

12 (7) Section 352(g), relating to assignment pay
13 or special duty pay.

14 (8) Section 353(j), relating to skill incentive
15 pay or proficiency bonus.

16 (9) Section 355(i), relating to retention incen-
17 tives for members qualified in critical military skills
18 or assigned to high priority units.

19 **SEC. 105. ONE-YEAR EXTENSION OF AUTHORITIES RELAT-**
20 **ING TO PAYMENT OF OTHER TITLE 37 BO-**
21 **NUSES AND SPECIAL PAY.**

22 The following sections of chapter 5 of title 37, United
23 States Code, are amended by striking “December 31,
24 2009” and inserting “December 31, 2010”:

1 (1) Section 301b(a), relating to aviation officer
2 retention bonus.

3 (2) Section 307a(g), relating to assignment in-
4 centive pay.

5 (3) Section 308(g), relating to reenlistment
6 bonus for active members.

7 (4) Section 309(e), relating to enlistment
8 bonus.

9 (5) Section 324(g), relating to accession bonus
10 for new officers in critical skills.

11 (6) Section 326(g), relating to incentive bonus
12 for conversion to military occupational specialty to
13 ease personnel shortage.

14 (7) Section 327(h), relating to incentive bonus
15 for transfer between Armed Forces.

16 (8) Section 330(f), relating to accession bonus
17 for officer candidates.

18 **SEC. 106. ONE-YEAR EXTENSION OF AUTHORITIES RELAT-**
19 **ING TO PAYMENT OF REFERRAL BONUSES.**

20 The following sections of title 10, United States
21 Code, are amended by striking “December 31, 2009” and
22 inserting “December 31, 2010”:

23 (1) Section 1030(i), relating to health profes-
24 sions referral bonus.

1 (2) Section 3252(h), relating to Army referral
2 bonus.

3 **SEC. 107. TECHNICAL CORRECTIONS AND CONFORMING**
4 **AMENDMENTS TO RECONCILE CONFLICTING**
5 **AMENDMENTS REGARDING CONTINUED PAY-**
6 **MENT OF BONUSES AND SIMILAR BENEFITS**
7 **FOR CERTAIN MEMBERS.**

8 (a) TECHNICAL CORRECTIONS TO RECONCILE CON-
9 FLICTING AMENDMENTS.—Section 303a(e) of title 37,
10 United States Code, is amended—

11 (1) in paragraph (1)(A), by striking “paragraph
12 (2)” and inserting “paragraphs (2) and (3)”;

13 (2) by redesignating paragraphs (3) and (4) as
14 paragraphs (4) and (5), respectively;

15 (3) in paragraph (5), as so redesignated, by
16 striking “paragraph (3)(B)” and inserting “para-
17 graph (4)(B)”;

18 (4) by redesignating paragraph (2), as added by
19 section 651(b) of the Duncan Hunter National De-
20 fense Authorization Act for Fiscal Year 2009 (Pub-
21 lic Law 110–417; 122 Stat. 4495), as paragraph
22 (3); and

23 (5) by redesignating the second subparagraph
24 (B) of paragraph (1), originally added as paragraph
25 (2) by section 2(a)(3) of the Hubbard Act (Public

1 Law 110–317; 122 Stat. 3526) and erroneously des-
2 ignated as subparagraph (B) by section 651(a)(3) of
3 the Duncan Hunter National Defense Authorization
4 Act for Fiscal Year 2009 (Public Law 110–417; 122
5 Stat. 4495), as paragraph (2).

6 (b) INCLUSION OF HUBBARD ACT AMENDMENT IN
7 CONSOLIDATED SPECIAL PAY AND BONUS AUTHORI-
8 TIES.—Section 373(b) of such title is amended—

9 (1) in paragraph (2), by striking the paragraph
10 heading and inserting “SPECIAL RULE FOR DE-
11 CEASED AND DISABLED MEMBERS.—”; and

12 (2) by adding at the end the following new
13 paragraph:

14 “(3) SPECIAL RULE FOR MEMBERS WHO RE-
15 CEIVE SOLE SURVIVORSHIP DISCHARGE.—(A) If a
16 member of the uniformed services receives a sole
17 survivorship discharge, the Secretary concerned—

18 “(i) shall not require repayment by the
19 member of the unearned portion of any bonus,
20 incentive pay, or similar benefit previously paid
21 to the member; and

22 “(ii) may grant an exception to the re-
23 quirement to terminate the payment of any un-
24 paid amounts of a bonus, incentive pay, or simi-
25 lar benefit if the Secretary concerned deter-

1 mines that termination of the payment of the
2 unpaid amounts would be contrary to a per-
3 sonnel policy or management objective, would
4 be against equity and good conscience, or would
5 be contrary to the best interests of the United
6 States.

7 “(B) In this paragraph, the term ‘sole survivor-
8 ship discharge’ means the separation of a member
9 from the Armed Forces, at the request of the mem-
10 ber, pursuant to the Department of Defense policy
11 permitting the early separation of a member who is
12 the only surviving child in a family in which—

13 “(i) the father or mother or one or more
14 siblings—

15 “(I) served in the Armed Forces; and

16 “(II) was killed, died as a result of
17 wounds, accident, or disease, is in a cap-
18 tured or missing in action status, or is per-
19 manently 100 percent disabled or hospital-
20 ized on a continuing basis (and is not em-
21 ployed gainfully because of the disability or
22 hospitalization); and

23 “(ii) the death, status, or disability did not
24 result from the intentional misconduct or willful
25 neglect of the parent or sibling and was not in-

1 curred during a period of unauthorized ab-
 2 sence.”.

3 **Subtitle B—Retired Pay Benefits**

4 **SEC. 111. RECOMPUTATION OF RETIRED PAY AND ADJUST-** 5 **MENT OF RETIRED GRADE OF RESERVE RE-** 6 **TIREES TO REFLECT SERVICE AFTER RE-** 7 **TIREMENT.**

8 (a) RECOMPUTATION OF RETIRED PAY.—Section
 9 12739 of title 10, United States Code, is amended by add-
 10 ing at the end the following new subsection:

11 “(e)(1) If a member of the Retired Reserve is recalled
 12 to an active status in the Selected Reserve of the Ready
 13 Reserve under section 10145(d) of this title and completes
 14 not less than two years of service in such active status,
 15 the member is entitled to the recomputation under this
 16 section of the retired pay of the member.

17 “(2) The Secretary concerned may reduce the two-
 18 year service requirement specified in paragraph (1) in the
 19 case of a member who—

20 “(A) is recalled to serve in a position of adju-
 21 tant general required under section 314 of title 32
 22 or in a position of assistant adjutant general subor-
 23 dinate to such a position of adjutant general;

24 “(B) completes at least six months of service in
 25 such position; and

1 “(C) fails to complete the minimum two years
2 of service solely because the appointment of the
3 member to such position is terminated or vacated as
4 described in section 324(b) of title 32.”.

5 (b) ADJUSTMENT OF RETIRED GRADE.—Section
6 12771 of such title is amended—

7 (1) by striking “Unless” and inserting “(a)
8 GRADE ON TRANSFER.—Unless”; and

9 (2) by adding at the end the following new sub-
10 section:

11 “(b) EFFECT OF SUBSEQUENT RECALL TO ACTIVE
12 STATUS.—(1) If a member of the Retired Reserve who
13 is a commissioned officer is recalled to an active status
14 in the Selected Reserve of the Ready Reserve under sec-
15 tion 10145(d) of this title and completes not less than two
16 years of service in such active status, the member is enti-
17 tled to an adjustment in the retired grade of the member
18 in the manner provided in section 1370(d) of this title.

19 “(2) The Secretary concerned may reduce the two-
20 year service requirement specified in paragraph (1) in the
21 case of a member who—

22 “(A) is recalled to serve in a position of adju-
23 tant general required under section 314 of title 32
24 or in a position of assistant adjutant general subor-
25 dinate to such a position of adjutant general;

1 “(B) completes at least six months of service in
2 such position; and

3 “(C) fails to complete the minimum two years
4 of service solely because the appointment of the
5 member to such position is terminated or vacated as
6 described in section 324(b) of title 32.”.

7 (c) RETROACTIVE APPLICABILITY.—The amend-
8 ments made by this section shall take effect as of January
9 1, 2008.

10 **SEC. 112. ELECTION TO RECEIVE RETIRED PAY FOR NON-**
11 **REGULAR SERVICE UPON RETIREMENT FOR**
12 **SERVICE IN AN ACTIVE RESERVE STATUS**
13 **PERFORMED AFTER ATTAINING ELIGIBILITY**
14 **FOR REGULAR RETIREMENT.**

15 (a) ELECTION AUTHORITY; REQUIREMENTS.—Sub-
16 section (a) of section 12741 of title 10, United States
17 Code, is amended to read as follows:

18 “(a) AUTHORITY TO ELECT TO RECEIVE RESERVE
19 RETIRED PAY.—(1) Notwithstanding the requirement in
20 paragraph (4) of section 12731(a) of this title that a per-
21 son may not receive retired pay under this chapter when
22 the person is entitled, under any other provision of law,
23 to retired pay or retainer pay, a person may elect to re-
24 ceive retired pay under this chapter, instead of receiving

1 retired or retainer pay under chapter 65, 367, 571, or 867
2 of this title, if the person—

3 “(A) satisfies the requirements specified in
4 paragraphs (1) and (2) of such section for entitle-
5 ment to retired pay under this chapter;

6 “(B) served in an active status in the Selected
7 Reserve of the Ready Reserve after becoming eligible
8 for retirement under chapter 65, 367, 571, or 867
9 of this title (without regard to whether the person
10 actually retired or received retired or retainer pay
11 under one of those chapters); and

12 “(C) completed not less than two years of satis-
13 factory service (as determined by the Secretary con-
14 cerned) in such active status (excluding any period
15 of active service).

16 “(2) The Secretary concerned may reduce the min-
17 imum two-year service requirement specified in paragraph
18 (1)(C) in the case of a person who—

19 “(A) completed at least six months of service in
20 a position of adjutant general required under section
21 314 of title 32 or in a position of assistant adjutant
22 general subordinate to such a position of adjutant
23 general; and

24 “(B) failed to complete the minimum years of
25 service solely because the appointment of the person

1 to such position was terminated or vacated as de-
2 scribed in section 324(b) of title 32.”.

3 (b) ACTIONS TO EFFECTUATE ELECTION.—Sub-
4 section (b) of such section is amended by striking para-
5 graph (1) and inserting the following new paragraph:

6 “(1) terminate the eligibility of the person to
7 retire under chapter 65, 367, 571, or 867 of this
8 title, if the person is not already retired under one
9 of those chapters, and terminate entitlement of the
10 person to retired or retainer pay under one of those
11 chapters, if the person was already receiving retired
12 or retainer pay under one of those chapters; and”.

13 (c) CONFORMING AMENDMENT TO REFLECT NEW
14 VARIABLE AGE REQUIREMENT FOR RETIREMENT.—Sub-
15 section (d) of such section is amended—

16 (1) in paragraph (1), by striking “attains 60
17 years of age” and inserting “attains the eligibility
18 age applicable to the person under section 12731(f)
19 of this title”; and

20 (2) in paragraph (2)(A), by striking “attains 60
21 years of age” and inserting “attains the eligibility
22 age applicable to the person under such section”.

23 (d) CLERICAL AMENDMENTS.—

1 (1) SECTION HEADING.—The heading for sec-
2 tion 12741 of such title is amended to read as fol-
3 lows:

4 **“§ 12741. Retirement for service in an active status**
5 **performed in the Selected Reserve of the**
6 **Ready Reserve after eligibility for reg-**
7 **ular retirement”.**

8 (2) TABLE OF SECTIONS.—The table of sections
9 at the beginning of chapter 1223 of such title is
10 amended by striking the item relating to section
11 12741 and inserting the following new item:

 “12741. Retirement for service in an active status performed in the Selected Re-
 serve of the Ready Reserve after eligibility for regular retire-
 ment.”.

12 (e) RETROACTIVE APPLICABILITY.—The amend-
13 ments made by this section shall take effect as of January
14 1, 2008.

1 **Subtitle C—Concurrent Receipt of**
 2 **Military Retired Pay and Vet-**
 3 **erans’ Disability Compensation**

4 **SEC. 121. ONE-YEAR EXPANSION OF ELIGIBILITY FOR CON-**
 5 **CURRENT RECEIPT OF MILITARY RETIRED**
 6 **PAY AND VETERANS’ DISABILITY COMPENSA-**
 7 **TION TO INCLUDE ALL CHAPTER 61 DIS-**
 8 **ABILITY RETIREES REGARDLESS OF DIS-**
 9 **ABILITY RATING PERCENTAGE OR YEARS OF**
 10 **SERVICE.**

11 (a) PHASED EXPANSION CONCURRENT RECEIPT.—
 12 Subsection (a) of section 1414 of title 10, United States
 13 Code, is amended to read as follows:

14 “(a) PAYMENT OF BOTH RETIRED PAY AND DIS-
 15 ABILITY COMPENSATION.—

16 “(1) PAYMENT OF BOTH REQUIRED.—

17 “(A) IN GENERAL.—Subject to subsection
 18 (b), a member or former member of the uni-
 19 formed services who is entitled for any month
 20 to retired pay and who is also entitled for that
 21 month to veterans’ disability compensation for a
 22 qualifying service-connected disability (in this
 23 section referred to as a ‘qualified retiree’) is en-
 24 titled to be paid both for that month without
 25 regard to sections 5304 and 5305 of title 38.

1 “(B) APPLICABILITY OF FULL CONCUR-
2 RENT RECEIPT PHASE-IN REQUIREMENT.—Dur-
3 ing the period beginning on January 1, 2004,
4 and ending on December 31, 2013, payment of
5 retired pay to a qualified retiree is subject to
6 subsection (c).

7 “(C) PHASE-IN EXCEPTION FOR 100 PER-
8 CENT DISABLED RETIREES.—The payment of
9 retired pay is subject to subsection (c) only dur-
10 ing the period beginning on January 1, 2004,
11 and ending on December 31, 2004, in the case
12 of the following qualified retirees:

13 “(i) A qualified retiree receiving vet-
14 erans’ disability compensation for a dis-
15 ability rated as 100 percent.

16 “(ii) A qualified retiree receiving vet-
17 erans’ disability compensation at the rate
18 payable for a 100 percent disability by rea-
19 son of a determination of individual
20 unemployability.

21 “(D) TEMPORARY PHASE-IN EXCEPTION
22 FOR CERTAIN CHAPTER 61 DISABILITY RETIR-
23 EES; TERMINATION.—Subject to subsection (b),
24 during the period beginning on January 1,
25 2010, and ending on September 30, 2010, sub-

1 section (c) shall not apply to a qualified retiree
2 described in subparagraph (B) or (C) of para-
3 graph (2).

4 “(2) QUALIFYING SERVICE-CONNECTED DIS-
5 ABILITY DEFINED.—In this section, the term ‘quali-
6 fying service-connected disability’ means the fol-
7 lowing:

8 “(A) In the case of a member or former
9 member receiving retired pay under any provi-
10 sion of law other than chapter 61 of this title,
11 or under chapter 61 with 20 years or more of
12 service otherwise creditable under section 1405
13 or computed under section 12732 of this title,
14 a service-connected disability or combination of
15 service-connected disabilities that is rated as
16 not less than 50 percent disabling by the Sec-
17 retary of Veterans Affairs.

18 “(B) In the case of a member or former
19 member receiving retired pay under chapter 61
20 of this title with less than 20 years of service
21 otherwise creditable under section 1405 or com-
22 puted under section 12732 of this title, a serv-
23 ice-connected disability or combination of serv-
24 ice-connected disabilities that is rated by the
25 Secretary of Veterans Affairs at the disabling

1 level specified in one of the following clauses
2 (and, subject to paragraph (3), is effective on
3 or after the date specified in the applicable
4 clause):

5 “(i) January 1, 2010, rated 100 per-
6 cent, or a rate payable at 100 percent by
7 reason of individual unemployability or
8 rated 90 percent.

9 “(ii) January 1, 2011, rated 80 per-
10 cent or 70 percent.

11 “(iii) January 1, 2012, rated 60 per-
12 cent or 50 percent.

13 “(C) In the case of a member or former
14 member receiving retired pay under chapter 61
15 regardless of years of service, a service-con-
16 nected disability or combination of service-con-
17 nected disabilities that is rated by the Secretary
18 of Veterans Affairs at the disabling level speci-
19 fied in one of the following clauses (and, subject
20 to paragraph (3), is effective on or after the
21 date specified in the applicable clause):

22 “(i) January 1, 2013, rated 40 per-
23 cent or 30 percent.

24 “(ii) January 1, 2014, any rating.

1 “(3) LIMITED DURATION.—Notwithstanding
2 the effective date specified in each clause of subpara-
3 graphs (B) and (C) of paragraph (2), the clause
4 shall apply only if the termination date specified in
5 subparagraph (D) of paragraph (1) occurs during or
6 after the calendar year specified in the clause, except
7 that, eligibility may not extend beyond the termi-
8 nation date.”.

9 (b) CONFORMING AMENDMENT TO SPECIAL RULES
10 FOR CHAPTER 61 DISABILITY RETIREES.—Subsection (b)
11 of such section is amended to read as follows:

12 “(b) SPECIAL RULES FOR CHAPTER 61 DISABILITY
13 RETIRES WHEN ELIGIBILITY HAS BEEN ESTABLISHED
14 FOR SUCH RETIREES.—

15 “(1) GENERAL REDUCTION RULE.—The retired
16 pay of a member retired under chapter 61 of this
17 title is subject to reduction under sections 5304 and
18 5305 of title 38, but only to the extent that the
19 amount of the members retired pay under chapter
20 61 of this title exceeds the amount of retired pay to
21 which the member would have been entitled under
22 any other provision of law based upon the member’s
23 service in the uniformed services if the member had
24 not been retired under chapter 61 of this title.

1 “(2) RETIREES WITH FEWER THAN 20 YEARS
2 OF SERVICE.—

3 “(A) BEFORE TERMINATION DATE.—If a
4 member with a qualifying service-connected dis-
5 ability (as defined in subsection (a)(2)) is re-
6 tired under chapter 61 of this title with fewer
7 than 20 years of creditable service otherwise
8 creditable under section 1405 or computed
9 under section 12732 of this title, and the termi-
10 nation date specified in subsection (a)(1)(D)
11 has not occurred, the retired pay of the member
12 is subject to reduction under sections 5304 and
13 5305 of title 38, but only to the extent that the
14 amount of the member’s retired pay under
15 chapter 61 of this title exceeds the amount
16 equal to 2½ percent of the member’s years of
17 creditable service multiplied by the member’s
18 retired pay base under section 1406(b)(1) or
19 1407 of this title, whichever is applicable to the
20 member.

21 “(B) AFTER TERMINATION DATE.—Sub-
22 section (a) does not apply to a member retired
23 under chapter 61 of this title with less than 20
24 years of service otherwise creditable under sec-
25 tion 1405 of this title, or with less than 20

1 years of service computed under section 12732
 2 of this title, at the time of the retirement of the
 3 member if the termination date in paragraph
 4 (1)(D) of such subsection has occurred.”.

5 (c) CONFORMING AMENDMENT TO FULL CONCUR-
 6 RENT RECEIPT PHASE-IN.—Subsection (c) of such section
 7 is amended by striking “the second sentence of”.

8 (d) CLERICAL AMENDMENTS.—

9 (1) SECTION HEADING.—The heading of such
 10 section is amended to read as follows:

11 **“§ 1414. Concurrent receipt of retired pay and vet-**
 12 **erans’ disability compensation”.**

13 (2) TABLE OF SECTIONS.—The table of sections
 14 at the beginning of chapter 71 of such title is
 15 amended by striking the item related to section 1414
 16 and inserting the following new item:

“1414. Concurrent receipt of retired pay and veterans’ disability compensa-
 tion.”.

17 (e) EFFECTIVE DATE.—The amendments made by
 18 this section shall take effect on January 1, 2010.

19 **TITLE II—FEDERAL EMPLOYEE** 20 **BENEFITS**

21 **Subtitle A—General Provisions**

22 **SEC. 201. CREDIT FOR UNUSED SICK LEAVE.**

23 (a) IN GENERAL.—Section 8415 of title 5, United
 24 States Code, is amended—

1 (1) by redesignating the second subsection (k)
2 and subsection (l) as subsections (l) and (m), respec-
3 tively; and

4 (2) in subsection (l) (as so redesignated by
5 paragraph (1))—

6 (A) by striking “(l) In computing” and in-
7 serting “(l)(1) In computing”; and

8 (B) by adding at the end the following:

9 “(2) Except as provided in paragraph (1), in com-
10 puting an annuity under this subchapter, the total service
11 of an employee who retires on an immediate annuity or
12 who dies leaving a survivor or survivors entitled to annuity
13 includes the days of unused sick leave to his credit under
14 a formal leave system and for which days the employee
15 has not received payment, except that these days will not
16 be counted in determining average pay or annuity eligi-
17 bility under this subchapter. For purposes of this sub-
18 section, in the case of any such employee who is excepted
19 from subchapter I of chapter 63 under section 6301(2)(x)
20 through (xiii), the days of unused sick leave to his credit
21 include any unused sick leave standing to his credit when
22 he was excepted from such subchapter.”.

23 (b) EXCEPTION FROM DEPOSIT REQUIREMENT.—
24 Section 8422(d)(2) of title 5, United States Code, is

1 amended by striking “section 8415(k)” and inserting
2 “paragraph (1) or (2) of section 8415(l)”.

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply with respect to annuities computed
5 based on separations occurring on or after the date of en-
6 actment of this Act.

7 **SEC. 202. LIMITED EXPANSION OF THE CLASS OF INDIVID-**
8 **UALS ELIGIBLE TO RECEIVE AN ACTUARI-**
9 **ALLY REDUCED ANNUITY UNDER THE CIVIL**
10 **SERVICE RETIREMENT SYSTEM.**

11 (a) IN GENERAL.—Section 8334(d)(2)(A)(i) of title
12 5, United States Code, is amended by striking “October
13 1, 1990” each place it appears and inserting “March 1,
14 1991”.

15 (b) APPLICABILITY.—The amendment made by sub-
16 section (a) shall be effective with respect to any annuity,
17 entitlement to which is based on a separation from service
18 occurring on or after the date of enactment of this Act.

19 **SEC. 203. COMPUTATION OF CERTAIN ANNUITIES BASED**
20 **ON PART-TIME SERVICE.**

21 (a) IN GENERAL.—Section 8339(p) of title 5, United
22 States Code, is amended by adding at the end the fol-
23 lowing:

24 “(3) In the administration of paragraph (1)—

1 “(A) subparagraph (A) of such paragraph shall
2 apply with respect to service performed before, on,
3 or after April 7, 1986; and

4 “(B) subparagraph (B) of such paragraph—

5 “(i) shall apply with respect to that portion
6 of any annuity which is attributable to service
7 performed on or after April 7, 1986; and

8 “(ii) shall not apply with respect to that
9 portion of any annuity which is attributable to
10 service performed before April 7, 1986.”.

11 (b) APPLICABILITY.—The amendment made by sub-
12 section (a) shall be effective with respect to any annuity,
13 entitlement to which is based on a separation from service
14 occurring on or after the date of enactment of this Act.

15 **SEC. 204. AUTHORITY TO DEPOSIT REFUNDS UNDER FERS.**

16 (a) DEPOSIT AUTHORITY.—Section 8422 of title 5,
17 United States Code, is amended by adding at the end the
18 following:

19 “(i)(1) Each employee or Member who has received
20 a refund of retirement deductions under this or any other
21 retirement system established for employees of the Gov-
22 ernment covering service for which such employee or Mem-
23 ber may be allowed credit under this chapter may deposit
24 the amount received, with interest. Credit may not be al-

1 lowed for the service covered by the refund until the de-
2 posit is made.

3 “(2) Interest under this subsection shall be computed
4 in accordance with paragraphs (2) and (3) of section
5 8334(e) and regulations prescribed by the Office. The op-
6 tion under the third sentence of section 8334(e)(2) to
7 make a deposit in one or more installments shall apply
8 to deposits under this subsection.

9 “(3) For the purpose of survivor annuities, deposits
10 authorized by this subsection may also be made by a sur-
11 vivor of an employee or Member.”.

12 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

13 (1) DEFINITIONAL AMENDMENT.—Section
14 8401(19)(C) of title 5, United States Code, is
15 amended by striking “8411(f);” and inserting
16 “8411(f) or 8422(i);”.

17 (2) CREDITING OF DEPOSITS.—Section 8422(c)
18 of title 5, United States Code, is amended by adding
19 at the end the following: “Deposits made by an em-
20 ployee, Member, or survivor also shall be credited to
21 the Fund.”.

22 (3) SECTION HEADING.—(A) The heading for
23 section 8422 of title 5, United States Code, is
24 amended to read as follows:

1 **“§ 8422. Deductions from pay; contributions for other**
 2 **service; deposits”.**

3 (B) The analysis for chapter 84 of title 5,
 4 United States Code, is amended by striking the item
 5 relating to section 8422 and inserting the following:

“8422. Deductions from pay; contributions for other service; deposits.”.

6 (4) RESTORATION OF ANNUITY RIGHTS.—The
 7 last sentence of section 8424(a) of title 5, United
 8 States Code, is amended by striking “based.” and
 9 inserting “based, until the employee or Member is
 10 reemployed in the service subject to this chapter.”.

11 **SEC. 205. RETIREMENT CREDIT FOR SERVICE OF CERTAIN**
 12 **EMPLOYEES TRANSFERRED FROM DISTRICT**
 13 **OF COLUMBIA SERVICE TO FEDERAL SERV-**
 14 **ICE.**

15 (a) RETIREMENT CREDIT.—

16 (1) IN GENERAL.—Any individual who is treat-
 17 ed as an employee of the Federal Government for
 18 purposes of chapter 83 or chapter 84 of title 5,
 19 United States Code, on or after the date of enact-
 20 ment of this Act who performed qualifying District
 21 of Columbia service shall be entitled to have such
 22 service included in calculating the individual’s cred-
 23 itable service under sections 8332 or 8411 of title 5,
 24 United States Code, but only for purposes of the fol-
 25 lowing provisions of such title:

1 (A) Sections 8333 and 8410 (relating to
2 eligibility for annuity).

3 (B) Sections 8336 (other than subsections
4 (d), (h), and (p) thereof) and 8412 (relating to
5 immediate retirement).

6 (C) Sections 8338 and 8413 (relating to
7 deferred retirement).

8 (D) Sections 8336(d), 8336(h), 8336(p),
9 and 8414 (relating to early retirement).

10 (E) Section 8341 and subchapter IV of
11 chapter 84 (relating to survivor annuities).

12 (F) Section 8337 and subchapter V of
13 chapter 84 (relating to disability benefits).

14 (2) TREATMENT OF DETENTION OFFICER SERV-
15 ICE AS LAW ENFORCEMENT OFFICER SERVICE.—Any
16 portion of an individual's qualifying District of Co-
17 lumbia service which consisted of service as a deten-
18 tion officer under section 2604(2) of the District of
19 Columbia Government Comprehensive Merit Per-
20 sonnel Act of 1978 (sec. 1–626.04(2), D.C. Official
21 Code) shall be treated as service as a law enforce-
22 ment officer under sections 8331(20) or 8401(17) of
23 title 5, United States Code, for purposes of applying
24 paragraph (1) with respect to the individual.

1 (3) SERVICE NOT INCLUDED IN COMPUTING
2 AMOUNT OF ANY ANNUITY.—Qualifying District of
3 Columbia service shall not be taken into account for
4 purposes of computing the amount of any benefit
5 payable out of the Civil Service Retirement and Dis-
6 ability Fund.

7 (b) QUALIFYING DISTRICT OF COLUMBIA SERVICE
8 DEFINED.—In this section, “qualifying District of Colum-
9 bia service” means any of the following:

10 (1) Service performed by an individual as a
11 nonjudicial employee of the District of Columbia
12 courts—

13 (A) which was performed prior to the ef-
14 fective date of the amendments made by section
15 11246(b) of the Balanced Budget Act of 1997;
16 and

17 (B) for which the individual did not ever
18 receive credit under the provisions of sub-
19 chapter III of chapter 83 or chapter 84 of title
20 5, United States Code (other than by virtue of
21 section 8331(1)(iv) of such title).

22 (2) Service performed by an individual as an
23 employee of an entity of the District of Columbia
24 government whose functions were transferred to the
25 Pretrial Services, Parole, Adult Supervision, and Of-

1 fender Supervision Trustee under section 11232 of
2 the Balanced Budget Act of 1997—

3 (A) which was performed prior to the ef-
4 fective date of the individual's coverage as an
5 employee of the Federal Government under sec-
6 tion 11232(f) of such Act; and

7 (B) for which the individual did not ever
8 receive credit under the provisions of sub-
9 chapter III of chapter 83 or chapter 84 of title
10 5, United States Code (other than by virtue of
11 section 8331(1)(iv) of such title).

12 (3) Service performed by an individual as an
13 employee of the District of Columbia Public De-
14 fender Service—

15 (A) which was performed prior to the ef-
16 fective date of the amendments made by section
17 7(e) of the District of Columbia Courts and
18 Justice Technical Corrections Act of 1998; and

19 (B) for which the individual did not ever
20 receive credit under the provisions of sub-
21 chapter III of chapter 83 or chapter 84 of title
22 5, United States Code (other than by virtue of
23 section 8331(1)(iv) of such title).

24 (4) In the case of an individual who was an em-
25 ployee of the District of Columbia Department of

1 Corrections who was separated from service as a re-
2 sult of the closing of the Lorton Correctional Com-
3 plex and who was appointed to a position with the
4 Bureau of Prisons, the District of Columbia courts,
5 the Pretrial Services, Parole, Adult Supervision, and
6 Offender Supervision Trustee, the United States Pa-
7 role Commission, or the District of Columbia Public
8 Defender Service, service performed by the indi-
9 vidual as an employee of the District of Columbia
10 Department of Corrections—

11 (A) which was performed prior to the ef-
12 fective date of the individual's coverage as an
13 employee of the Federal Government; and

14 (B) for which the individual did not ever
15 receive credit under the provisions of sub-
16 chapter III of chapter 83 or chapter 84 of title
17 5, United States Code (other than by virtue of
18 section 8331(1)(iv) of such title).

19 (c) CERTIFICATION OF SERVICE.—The Office of Per-
20 sonnel Management shall accept the certification of the
21 appropriate personnel official of the government of the
22 District of Columbia or other independent employing enti-
23 ty concerning whether an individual performed qualifying
24 District of Columbia service and the length of the period
25 of such service the individual performed.

1 **Subtitle B—Non-Foreign Area**
 2 **Retirement Equity Assurance**

3 **SEC. 211. SHORT TITLE.**

4 This subtitle may be cited as the “Non-Foreign Area
 5 Retirement Equity Assurance Act of 2009” or the “Non-
 6 Foreign AREA Act of 2009”.

7 **SEC. 212. EXTENSION OF LOCALITY PAY.**

8 (a) LOCALITY-BASED COMPARABILITY PAYMENTS.—
 9 Section 5304 of title 5, United States Code, is amended—

10 (1) in subsection (f)(1), by striking subpara-
 11 graph (A) and inserting the following:

12 “(A) each General Schedule position in the
 13 United States, as defined under section
 14 5921(4), and its territories and possessions, in-
 15 cluding the Commonwealth of Puerto Rico and
 16 the Commonwealth of the Northern Mariana Is-
 17 lands, shall be included within a pay locality;”;

18 (2) in subsection (g)—

19 (A) in paragraph (2)—

20 (i) in subparagraph (A), by striking
 21 “and” after the semicolon;

22 (ii) in subparagraph (B) by striking
 23 the period and inserting “; and”; and

24 (iii) by adding after subparagraph (B)
 25 the following:

1 “(C) positions under subsection (h)(1)(C)
2 not covered by appraisal systems certified under
3 section 5382; and”; and

4 (B) by adding at the end the following:

5 “(3) The applicable maximum under this sub-
6 section shall be level II of the Executive Schedule for
7 positions under subsection (h)(1)(C) covered by ap-
8 praisal systems certified under section 5307(d).”;
9 and

10 (3) in subsection (h)(1)—

11 (A) in subparagraph (B) by striking “and”
12 after the semicolon;

13 (B) by redesignating subparagraph (C) as
14 subparagraph (D);

15 (C) by inserting after subparagraph (B)
16 the following:

17 “(C) a Senior Executive Service position
18 under section 3132 or 3151 or a senior level po-
19 sition under section 5376 stationed within the
20 United States, but outside the 48 contiguous
21 States and the District of Columbia in which
22 the incumbent was an individual who on the
23 day before the date of enactment of the Non-
24 Foreign Area Retirement Equity Assurance Act

1 of 2009 was eligible to receive a cost-of-living
2 allowance under section 5941; and”;

3 (D) in clause (iv) in the matter following
4 subparagraph (D), by inserting “, except for
5 members covered by subparagraph (C)” before
6 the semicolon; and

7 (E) in clause (v) in the matter following
8 subparagraph (D), by inserting “, except for
9 members covered by subparagraph (C)” before
10 the semicolon.

11 (b) ALLOWANCES BASED ON LIVING COSTS AND
12 CONDITIONS OF ENVIRONMENT.—Section 5941 of title 5,
13 United States Code, is amended—

14 (1) in subsection (a), by adding after the last
15 sentence “Notwithstanding any preceding provision
16 of this subsection, the cost-of-living allowance rate
17 based on paragraph (1) shall be the cost-of-living al-
18 lowance rate in effect on the date of enactment of
19 the Non-Foreign Area Retirement Equity Assurance
20 Act of 2009, except as adjusted under subsection
21 (c).”;

22 (2) by redesignating subsection (b) as sub-
23 section (d); and

24 (3) by inserting after subsection (a) the fol-
25 lowing:

1 “(b) This section shall apply only to areas that are
2 designated as cost-of-living allowance areas as in effect on
3 December 31, 2009.

4 “(c)(1) The cost-of-living allowance rate payable
5 under this section shall be adjusted on the first day of
6 the first applicable pay period beginning on or after—

7 “(A) January 1, 2010; and

8 “(B) January 1 of each calendar year in which
9 a locality-based comparability adjustment takes ef-
10 fect under section 214 (2) and (3) of the Non-For-
11 eign Area Retirement Equity Assurance Act of
12 2009.

13 “(2)(A) In this paragraph, the term ‘applicable local-
14 ity-based comparability pay percentage’ means, with re-
15 spect to calendar year 2010 and each calendar year there-
16 after, the applicable percentage under section 214 (1), (2),
17 or (3) of Non-Foreign Area Retirement Equity Assurance
18 Act of 2009.

19 “(B) Each adjusted cost-of-living allowance rate
20 under paragraph (1) shall be computed by—

21 “(i) subtracting 65 percent of the applicable lo-
22 cality-based comparability pay percentage from the
23 cost-of-living allowance percentage rate in effect on
24 December 31, 2009; and

1 “(ii) dividing the resulting percentage deter-
2 mined under clause (i) by the sum of—

3 “(I) one; and

4 “(II) the applicable locality-based com-
5 parability payment percentage expressed as a
6 numeral.

7 “(3) No allowance rate computed under paragraph
8 (2) may be less than zero.

9 “(4) Each allowance rate computed under paragraph
10 (2) shall be paid as a percentage of basic pay (including
11 any applicable locality-based comparability payment under
12 section 5304 or similar provision of law and any applicable
13 special rate of pay under section 5305 or similar provision
14 of law).”.

15 **SEC. 213. ADJUSTMENT OF SPECIAL RATES.**

16 (a) IN GENERAL.—Each special rate of pay estab-
17 lished under section 5305 of title 5, United States Code,
18 and payable in an area designated as a cost-of-living allow-
19 ance area under section 5941(a) of that title, shall be ad-
20 justed, on the dates prescribed by section 214 of this sub-
21 title, in accordance with regulations prescribed by the Di-
22 rector of the Office of Personnel Management under sec-
23 tion 218 of this subtitle.

24 (b) AGENCIES WITH STATUTORY AUTHORITY.—

1 (1) IN GENERAL.—Each special rate of pay es-
2 tablished under an authority described under para-
3 graph (2) and payable in a location designated as a
4 cost-of-living allowance area under section
5 5941(a)(1) of title 5, United States Code, shall be
6 adjusted in accordance with regulations prescribed
7 by the applicable head of the agency that are con-
8 sistent with the regulations issued by the Director of
9 the Office of Personnel Management under sub-
10 section (a).

11 (2) STATUTORY AUTHORITY.—The authority re-
12 ferred to under paragraph (1), is any statutory au-
13 thority that—

14 (A) is similar to the authority exercised
15 under section 5305 of title 5, United States
16 Code;

17 (B) is exercised by the head of an agency
18 when the head of the agency determines it to be
19 necessary in order to obtain or retain the serv-
20 ices of persons specified by statute; and

21 (C) authorizes the head of the agency to
22 increase the minimum, intermediate, or max-
23 imum rates of basic pay authorized under appli-
24 cable statutes and regulations.

1 (c) TEMPORARY ADJUSTMENT.—Regulations issued
 2 under subsection (a) or (b) may provide that statutory
 3 limitations on the amount of such special rates may be
 4 temporarily raised to a higher level during the transition
 5 period described in section 214 ending on the first day
 6 of the first pay period beginning on or after January 1,
 7 2012, at which time any special rate of pay in excess of
 8 the applicable limitation shall be converted to a retained
 9 rate under section 5363 of title 5, United States Code.

10 **SEC. 214. TRANSITION SCHEDULE FOR LOCALITY-BASED**
 11 **COMPARABILITY PAYMENTS.**

12 Notwithstanding any other provision of this subtitle
 13 or section 5304 or 5304a of title 5, United States Code,
 14 in implementing the amendments made by this subtitle,
 15 for each non-foreign area determined under section
 16 5941(b) of that title, the applicable rate for the locality-
 17 based comparability adjustment that is used in the com-
 18 putation required under section 5941(c) of that title shall
 19 be adjusted effective on the first day of the first pay period
 20 beginning on or after January 1—

21 (1) in calendar year 2010, by using $\frac{1}{3}$ of the
 22 locality pay percentage for the rest of United States
 23 locality pay area;

1 (2) in calendar year 2011, by using $\frac{2}{3}$ of the
2 otherwise applicable comparability payment approved
3 by the President for each non-foreign area; and

4 (3) in calendar year 2012 and each subsequent
5 year, by using the full amount of the applicable com-
6 parability payment approved by the President for
7 each non-foreign area.

8 **SEC. 215. SAVINGS PROVISION.**

9 (a) SENSE OF CONGRESS.—It is the sense of Con-
10 gress that—

11 (1) the application of this subtitle to any em-
12 ployee should not result in a decrease in the take
13 home pay of that employee;

14 (2) in calendar year 2012 and each subsequent
15 year, no employee shall receive less than the Rest of
16 the U.S. locality pay rate;

17 (3) concurrent with the surveys next conducted
18 under the provisions of section 5304(d)(1)(A) of title
19 5, United States Code, beginning after the date of
20 the enactment of this Act, the Bureau of Labor Sta-
21 tistics should conduct separate surveys to determine
22 the extent of any pay disparity (as defined by sec-
23 tion 5302 of that title) that may exist with respect
24 to positions located in the State of Alaska, the State
25 of Hawaii, and the United States territories, includ-

ing American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, and the United States Virgin Islands;

(4) if the surveys under paragraph (3) indicate that the pay disparity determined for the State of Alaska, the State of Hawaii, or any 1 of the United States territories including American Samoa, Guam, Commonwealth of the Northern Mariana Islands, Commonwealth of Puerto Rico, and the United States Virgin Islands exceeds the pay disparity determined for the locality which (for purposes of section 5304 of that title) is commonly known as the “Rest of the United States”, the President’s Pay Agent should take appropriate measures to provide that each such surveyed area be treated as a separate pay locality for purposes of that section; and

(5) the President’s Pay Agent will establish 1 locality area for the entire State of Hawaii and 1 locality area for the entire State of Alaska.

(b) SAVINGS PROVISIONS.—

(1) IN GENERAL.—During the period described under section 214 of this subtitle, an employee paid a special rate under 5305 of title 5, United States Code, who the day before the date of enactment of this Act was eligible to receive a cost-of-living allow-

1 ance under section 5941 of title 5, United States
2 Code, and who continues to be officially stationed in
3 an allowance area, shall receive an increase in the
4 employee's special rate consistent with increases in
5 the applicable special rate schedule. For employees
6 in allowance areas, the minimum step rate for any
7 grade of a special rate schedule shall be increased at
8 the time of an increase in the applicable locality rate
9 percentage for the allowance area by not less than
10 the dollar increase in the locality-based com-
11 parability payment for a non-special rate employee
12 at the same minimum step provided under section
13 214 of this subtitle, and corresponding increases
14 shall be provided for all step rates of the given pay
15 range.

16 (2) CONTINUATION OF COST OF LIVING ALLOW-
17 ANCE RATE.—If an employee, who the day before
18 the date of enactment of this Act was eligible to re-
19 ceive a cost-of-living allowance under section 5941 of
20 title 5, United States Code, would receive a rate of
21 basic pay and applicable locality-based comparability
22 payment which is in excess of the maximum rate
23 limitation set under section 5304(g) of title 5,
24 United States Code, for his position (but for that
25 maximum rate limitation) due to the operation of

1 this subtitle, the employee shall continue to receive
2 the cost-of-living allowance rate in effect on Decem-
3 ber 31, 2009 without adjustment until—

4 (A) the employee leaves the allowance area
5 or pay system; or

6 (B) the employee is entitled to receive
7 basic pay (including any applicable locality-
8 based comparability payment or similar supple-
9 ment) at a higher rate,
10 but, when any such position becomes vacant, the pay
11 of any subsequent appointee thereto shall be fixed in
12 the manner provided by applicable law and regula-
13 tion.

14 (3) LOCALITY-BASED COMPARABILITY PAY-
15 MENTS.—Any employee covered under paragraph (2)
16 shall receive any applicable locality-based com-
17 parability payment extended under section 214 of
18 this subtitle which is not in excess of the maximum
19 rate set under section 5304(g) of title 5, United
20 States Code, for his position including any future in-
21 crease to statutory pay limitations under 5318 of
22 title 5, United States Code. Notwithstanding para-
23 graph (2), to the extent that an employee covered
24 under that paragraph receives any amount of local-
25 ity-based comparability payment, the cost-of-living

1 allowance rate under that paragraph shall be re-
2 duced accordingly, as provided under section
3 5941(c)(2)(B) of title 5, United States Code.

4 **SEC. 216. APPLICATION TO OTHER ELIGIBLE EMPLOYEES.**

5 (a) IN GENERAL.—

6 (1) DEFINITION.—In this subsection, the term
7 “covered employee” means—

8 (A) any employee who—

9 (i) on the day before the date of en-
10 actment of this Act—

11 (I) was eligible to be paid a cost-
12 of-living allowance under 5941 of title
13 5, United States Code; and

14 (II) was not eligible to be paid lo-
15 cality-based comparability payments
16 under 5304 or 5304a of that title; or

17 (ii) on or after the date of enactment
18 of this Act becomes eligible to be paid a
19 cost-of-living allowance under 5941 of title
20 5, United States Code; or

21 (B) any employee who—

22 (i) on the day before the date of en-
23 actment of this Act—

1 (I) was eligible to be paid an al-
2 lowance under section 1603(b) of title
3 10, United States Code;

4 (II) was eligible to be paid an al-
5 lowance under section 1005(b) of title
6 39, United States Code;

7 (III) was employed by the Trans-
8 portation Security Administration of
9 the Department of Homeland Security
10 and was eligible to be paid an allow-
11 ance based on section 5941 of title 5,
12 United States Code; or

13 (IV) was eligible to be paid under
14 any other authority a cost-of-living al-
15 lowance that is equivalent to the cost-
16 of-living allowance under section 5941
17 of title 5, United States Code; or

18 (ii) on or after the date of enactment
19 of this Act—

20 (I) becomes eligible to be paid an
21 allowance under section 1603(b) of
22 title 10, United States Code;

23 (II) becomes eligible to be paid
24 an allowance under section 1005(b) of
25 title 39, United States Code;

1 (III) is employed by the Trans-
2 portation Security Administration of
3 the Department of Homeland Security
4 and becomes eligible to be paid an al-
5 lowance based on section 5941 of title
6 5, United States Code; or

7 (IV) is eligible to be paid under
8 any other authority a cost-of-living al-
9 lowance that is equivalent to the cost-
10 of-living allowance under section 5941
11 of title 5, United States Code.

12 (2) APPLICATION TO COVERED EMPLOYEES.—

13 (A) IN GENERAL.—Notwithstanding any
14 other provision of law, for purposes of this sub-
15 title (including the amendments made by this
16 subtitle) any covered employee shall be treated
17 as an employee to whom section 5941 of title
18 5, United States Code (as amended by section
19 212 of this subtitle), and section 214 of this
20 subtitle apply.

21 (B) PAY FIXED BY STATUTE.—Pay to cov-
22 ered employees under section 5304 or 5304a of
23 title 5, United States Code, as a result of the
24 application of this subtitle shall be considered
25 to be fixed by statute.

1 (C) PERFORMANCE APPRAISAL SYSTEM.—

2 With respect to a covered employee who is sub-
 3 ject to a performance appraisal system no part
 4 of pay attributable to locality-based com-
 5 parability payments as a result of the applica-
 6 tion of this subtitle including section 5941 of
 7 title 5, United States Code (as amended by sec-
 8 tion 212 of this subtitle), may be reduced on
 9 the basis of the performance of that employee.

10 (b) POSTAL EMPLOYEES IN NON-FOREIGN AREAS.—

11 (1) IN GENERAL.—Section 1005(b) of title 39,
 12 United States Code, is amended—

13 (A) by inserting “(1)” after “(b)”;

14 (B) by striking “Section 5941,” and in-
 15 serting “Except as provided under paragraph
 16 (2), section 5941”;

17 (C) by striking “For purposes of such sec-
 18 tion,” and inserting “Except as provided under
 19 paragraph (2), for purposes of section 5941 of
 20 that title,”; and

21 (D) by adding at the end the following:

22 “(2) On and after the date of enactment of the
 23 Non-Foreign Area Retirement Equity Assurance Act
 24 of 2009—

1 “(A) the provisions of that Act and section
2 5941 of title 5 shall apply to officers and em-
3 ployees covered by section 1003 (b) and (c)
4 whose duty station is in a nonforeign area; and

5 “(B) with respect to officers and employees
6 of the Postal Service (other than those officers
7 and employees described under subparagraph
8 (A)) of section 216(b)(2) of that Act shall
9 apply.”.

10 (2) CONTINUATION OF COST OF LIVING ALLOW-
11 ANCE.—

12 (A) IN GENERAL.—Notwithstanding any
13 other provision of this subtitle, any employee of
14 the Postal Service (other than an employee cov-
15 ered by section 1003 (b) and (c) of title 39,
16 United States Code, whose duty station is in a
17 nonforeign area) who is paid an allowance
18 under section 1005(b) of that title shall be
19 treated for all purposes as if the provisions of
20 this subtitle (including the amendments made
21 by this subtitle) had not been enacted, except
22 that the cost-of-living allowance rate paid to
23 that employee—

(i) may result in the allowance exceeding 25 percent of the rate of basic pay of that employee; and

(ii) shall be the greater of—

(I) the cost-of-living allowance rate in effect on December 31, 2009, for the applicable area; or

(II) the applicable locality-based comparability pay percentage under section 214.

(B) RULE OF CONSTRUCTION.—Nothing in this subtitle shall be construed to—

(i) provide for an employee described under subparagraph (A) to be a covered employee as defined under subsection (a); or

(ii) authorize an employee described under subparagraph (A) to file an election under section 217 of this subtitle.

SEC. 217. ELECTION OF ADDITIONAL BASIC PAY FOR ANNUITY COMPUTATION BY EMPLOYEES.

(a) DEFINITION.—In this section the term “covered employee” means any employee—

(1) to whom section 214 applies;

1 (2) who is separated from service by reason of
2 retirement under chapter 83 or 84 of title 5, United
3 States Code, during the period of January 1, 2010,
4 through December 31, 2012; and

5 (3) who files an election with the Office of Per-
6 sonnel Management under subsection (b).

7 (b) ELECTION.—

8 (1) IN GENERAL.—An employee described
9 under subsection (a) (1) and (2) may file an election
10 with the Office of Personnel Management to be cov-
11 ered under this section.

12 (2) DEADLINE.—An election under this sub-
13 section may be filed not later than December 31,
14 2012.

15 (c) COMPUTATION OF ANNUITY.—

16 (1) IN GENERAL.—Except as provided under
17 paragraph (2), for purposes of the computation of
18 an annuity of a covered employee any cost-of-living
19 allowance under section 5941 of title 5, United
20 States Code, paid to that employee during the first
21 applicable pay period beginning on or after January
22 1, 2010, through the first applicable pay period end-
23 ing on or after December 31, 2012, shall be consid-
24 ered basic pay as defined under section 8331(3) or
25 8401(4) of that title.

1 (2) LIMITATION.—The amount of the cost-of-
2 living allowance which may be considered basic pay
3 under paragraph (1) may not exceed the amount of
4 the locality-based comparability payments the em-
5 ployee would have received during that period for
6 the applicable pay area if the limitation under sec-
7 tion 214 of this subtitle did not apply.

8 (d) CIVIL SERVICE RETIREMENT AND DISABILITY
9 RETIREMENT FUND.—

10 (1) EMPLOYEE CONTRIBUTIONS.—A covered
11 employee shall pay into the Civil Service Retirement
12 and Disability Retirement Fund—

13 (A) an amount equal to the difference be-
14 tween—

15 (i) employee contributions that would
16 have been deducted and withheld from pay
17 under section 8334 or 8422 of title 5,
18 United States Code, during the period de-
19 scribed under subsection (c) of this section
20 if the cost-of-living allowances described
21 under that subsection had been treated as
22 basic pay under section 8331(3) or
23 8401(4) of title 5, United States Code; and

24 (ii) employee contributions that were
25 actually deducted and withheld from pay

1 under section 8334 or 8422 of title 5,
2 United States Code, during that period;
3 and

4 (B) interest as prescribed under section
5 8334(e) of title 5, United States Code, based on
6 the amount determined under subparagraph
7 (A).

8 (2) AGENCY CONTRIBUTIONS.—

9 (A) IN GENERAL.—The employing agency
10 of a covered employee shall pay into the Civil
11 Service Retirement and Disability Retirement
12 Fund an amount for applicable agency con-
13 tributions based on payments made under para-
14 graph (1).

15 (B) SOURCE.—Amounts paid under this
16 paragraph shall be contributed from the appro-
17 priation or fund used to pay the employee.

18 (3) REGULATIONS.—The Office of Personnel
19 Management may prescribe regulations to carry out
20 this section.

21 **SEC. 218. REGULATIONS.**

22 (a) IN GENERAL.—The Director of the Office of Per-
23 sonnel Management shall prescribe regulations to carry
24 out this subtitle, including—

1 (1) rules for special rate employees described
2 under section 213;

3 (2) rules for adjusting rates of basic pay for
4 employees in pay systems administered by the Office
5 of Personnel Management when such employees are
6 not entitled to locality-based comparability payments
7 under section 5304 of title 5, United States Code,
8 without regard to otherwise applicable statutory pay
9 limitations during the transition period described in
10 section 214 ending on the first day of the first pay
11 period beginning on or after January 1, 2012; and

12 (3) rules governing establishment and adjust-
13 ment of saved or retained rates for any employee
14 whose rate of pay exceeds applicable pay limitations
15 on the first day of the first pay period beginning on
16 or after January 1, 2012.

17 (b) OTHER PAY SYSTEMS.—With the concurrence of
18 the Director of the Office of Personnel Management, the
19 administrator of a pay system not administered by the Of-
20 fice of Personnel Management shall prescribe regulations
21 to carry out this subtitle with respect to employees in such
22 pay system, consistent with the regulations prescribed by
23 the Office under subsection (a). With respect to employees
24 not entitled to locality-based comparability payments
25 under section 5304 of title 5, United States Code, regula-

1 tions prescribed under this subsection may provide for spe-
 2 cial payments or adjustments for employees who were eli-
 3 gible to receive a cost-of-living allowance under section
 4 5941 of that title on the date before the date of enactment
 5 of this Act.

6 **SEC. 219. EFFECTIVE DATES.**

7 (a) IN GENERAL.—Except as provided by subsection
 8 (b), this subtitle (including the amendments made by this
 9 subtitle) shall take effect on the date of enactment of this
 10 Act.

11 (b) LOCALITY PAY AND SCHEDULE.—The amend-
 12 ments made by section 212 and the provisions of section
 13 214 shall take effect on the first day of the first applicable
 14 pay period beginning on or after January 1, 2010.

15 **TITLE III—DEEPWATER OIL AND**
 16 **GAS RESEARCH AND DEVEL-**
 17 **OPMENT FUNDING SOURCE**
 18 **REPEAL**

19 **SEC. 301. REPEAL.**

20 Effective October 1, 2010, section 999H of the En-
 21 ergy Policy Act of 2005 (42 U.S.C. 16378) is amended—

22 (1) by striking subsections (a), (b), (c), and (f);

23 (2) by redesignating subsections (d) and (e) as
 24 subsections (a) and (b), respectively;

1 (3) in subsection (a), as so redesignated, by
2 striking “obligated from the Fund under subsection
3 (a)(1)” and inserting “available under this section”;
4 and

5 (4) in subsection (b), as so redesignated, by
6 striking “In addition to other amounts that are
7 made available to carry out this section, there” and
8 inserting “There”.

○